

ORIGINAL
ORIGINAL
FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re the Applications of) MM Docket No. 92-106
JEFFREY SCOTT) File No. BPH-910213ME
EICHER COMMUNICATIONS, INC.) File No. BPH-910213MF
For Construction Permit for)
new FM station on Channel 278)
at Bethany Beach, Delaware)

RECEIVED

[SEP 24 1992]

To: The Managing Director

REQUEST FOR FEE REFUND

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EICHER COMMUNICATIONS, INC. ("Eicher") pursuant to Section 1.1111(c)(4) of the Commission's Rules, hereby requests a refund of its hearing designation fee paid in the above-captioned proceeding.

1. On July 15, 1991, Eicher filed its Hearing Fee Notice in the above-captioned case, together with a check made payable to the Commission in the amount of \$6,760.00, the hearing designation fee specified in Section 1.1104 of the Commission's Rules, 47 C.F.R. §1.1104. Eicher has attached a copy of its Notice as Appendix 1 to this Request.

2. By Hearing Designation Order in released May 14, 1992, the Commission designated the Eicher application for comparative hearing. See, Jeffrey Scott, 7 FCC Rcd 3041 (M. Med. Bur. 1992).

3. On June 3, 1992, Eicher joined in the filing of a timely "Joint Request for Approval of Settlement Agreement," which contemplated the approval of an agreement whereby Eicher would dismiss its application in consideration of a settlement payment. The Joint Request was filed within the deadline for settlements for

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which the Commission will refund hearing fees. 47 C.F.R. §1.1111(c)(4). See also, Report and Order on Reform of Comparative Hearing Process, 6 FCC Rcd 157, 158 (¶ 7) (1990).

4. By Memorandum Opinion and Order, FCC 92M-831, released July 31, 1992, a copy of which is contained in Appendix 2 hereto, the Presiding Administrative Law Judge granted the Joint Request, approved the Settlement Agreement between Eicher and Jeffrey Scott, dismissed Eicher's application, granted the Scott application and terminated MM Docket No. 92-106.

5. Eicher's Request complies in all respects with the fee refund provisions of 47 C.F.R. §1.1111(c)(4). Report and Order on Reform of Hearing Process, supra. Contrast, Country Investments Limited Partnership, 7 FCC Rcd 3190 (1992). Accordingly, the Managing Director should refund Eicher's hearing fee.

WHEREFORE, in light of the foregoing, Eicher respectfully requests that the Managing Director refund \$6,670.00 to Eicher.

Respectfully submitted,

EICHER COMMUNICATIONS, INC.

By: 

Stephen Diaz Gavin
BESOZZI & GAVIN
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036
(202) 293-7405

Its Counsel

Dated: September 24, 1992
0745/refund.mot

APPENDIX 1

Law Offices

BESOZZI & GAVIN

1901 L Street, N.W., Suite 200
Washington, D.C. 20036

Stamp - in

Stephen Diaz Gavin
(Admitted in Pennsylvania)

(202) 293-7405
Telecopier: (202) 457-0443

July 12, 1991

VIA FEDERAL EXPRESS

FCC/MELLON JUL 15 1991

Federal Communications Commission
c/o Mellon Bank
Three Mellon Bank Center
525 William Penn Way
27th Floor Room 153-2713
Pittsburgh, Pennsylvania 15251

REC'D JUL 18

Re: Eicher Communications, Inc.
File No. BPH-910213MF
Bethany Beach, DE FM Station

Dear Sir or Madam:

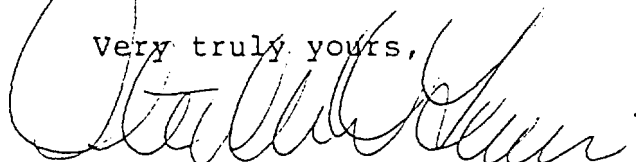
Eicher Communications, Inc. ("Eicher"), through its counsel, hereby submits its hearing fee, as required by the Commission's Memorandum Opinion and Order, 6 FCC Rcd ____ (1991) [FCC 91-154, released May 15, 1991].

Eicher's Form 301 Application for new station at Bethany Beach, Delaware has been accepted for filing, Report No. NA-147, released May 13, 1991. The application has not yet been designated for hearing.

Pursuant to Section 1.1104 of the Commission's Rules, Eicher has included a check made payable to the Federal Communications Commission in the amount of \$6,760.00, which is the Commission's specified hearing fee for new FM applications. 47 C.F.R. §1.1104.

If there are any questions concerning this matter, please contact Stephen Diaz Gavin at (202) 293-7405.

Very truly yours,



Stephen Diaz Gavin
Counsel to Eicher Communications,
Inc.

Enclosure

cc: Elaine C. Eicher
Public File

Approved by OMB
3060-0440
Expires 2/28/93

FEDERAL COMMUNICATIONS COMMISSION
FEE PROCESSING FORM

FOR
FCC
USE
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)

EICHER COMMUNICATIONS, INC.

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

18 Terrace Road

MAILING ADDRESS (Line 2) (If required) (Maximum 35 characters)

CITY

Rehoboth Beach

STATE OR COUNTRY (If foreign address)

DE

ZIP CODE

19971

CALL SIGN OR OTHER FCC IDENTIFIER (If applicable)

File No. 910213MF

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)	(B)	(C)								
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY							
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SECTION II

— To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

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TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING										
\$ 6,760.00										



THE RESERVE FUND

ELAINE C EICHER &
JOHN P EICHER JTEN
196-56-823

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PAY TO THE
ORDER OF

DATE

July 11

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1-12/210

Federal Communications Commission

\$ 6760.00

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DOLLARS

PAYABLE THROUGH
CHEMICAL BANK
11 West 51st Street
New York, N.Y. 10019

NOT VALID IF DRAWN FOR LESS THAN \$500

Hearing Fee BPH 910213 MF

Elaine Eicher

⑈0019656823⑈ ⑆021000128⑆ 700⑈074651⑈ 0194

APPENDIX 2

F-15-107-10

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92M-831
03740

In re Applications of)	MM DOCKET NO. 92-106
)	
JEFFREY SCOTT)	File No. BPH-910213ME
)	
EICHER COMMUNICATIONS, INC.)	File No. BPH-910213MF
)	
For Construction Permit for a)	
New FM Station on Channel 278A)	
in Bethany Beach, Delaware)	

MEMORANDUM OPINION AND ORDER

Issued: July 29, 1992;

Released: July 31, 1992

Background

1. This is a ruling on a Joint Request For Approval Of Settlement Agreement that was filed on June 3, 1992, by Eicher Communications, Inc. ("Eicher") and Jeffrey Scott ("Scott"), and on a related Petition For Leave To Amend that was filed by Scott on June 3, 1992. Also considered are a Supplement To Joint Request For Approval Of Settlement Agreement filed by Eicher on June 16, 1992, and Mass Media Bureau ("Bureau") Comments In Support Of Joint Request For Approval Of Settlement Agreement filed on June 18, 1992.

Facts

2. Eicher and Scott are the only two exclusive applicants for a construction permit for a new FM Station on Channel 278 at Bethany Beach, Delaware. See Hearing Designation Order DA 92-559, released May 14, 1992, reported at Jeffrey Scott, et al., 7 F.C.C. Rcd 3041 (MM Bur. 1992).

3. The Settlement contemplates that Eicher's application will be voluntarily dismissed with prejudice in return for a payment of a sum of money that is not to exceed \$18,000, representing its legitimate and prudent expenses. In addition, the parties have entered into a Consulting Agreement pursuant to which Scott will pay Eicher \$17,000 to provide broadcast station financial planning and management services to Scott for a period of one year. Scott contemplates withdrawing his integration and diversification commitments and Scott would receive the grant.

4. The proposed Amendment addresses an issue set in the Hearing Designation Order, supra at Paras. 5 and 9 on how Scott "propose[s]" to resolve any RF exposure to workers" on his proposed tower. Scott was permitted to amend his tower site to cure a short-spacing. See Hearing Designation Order, supra at Paras. 2-3. Scott proposes to construct a new tower and commits to shut down station operations as necessary in order to protect workers. On July 28, 1992, the Assistant Chief, Audio Services Division, advised the Presiding Judge in writing:

Upon examination of the enclosed pleading [Petition For Leave To Amend], the Bureau finds that the information satisfies the requirements of 47 C.F.R. §1.1311.

Accordingly, the Bureau requests that the contingent environmental issue specified as to this applicant be eliminated from the Hearing Designation Order.

See ltr. dtd. July 28, 1992 from Assistant Chief Jan Gay to the Presiding Judge. Based on the unqualified statement of the Bureau quoted above and the representations of Scott in its Petition For Leave To Amend, the environmental issue against Scott is considered as deleted from the designation order.

5. Eicher has set forth in its Supplement an itemization which sufficiently demonstrates to the Presiding Judge that its legitimate and prudent expenses incurred in this proceeding are in excess of \$18,000. Also, it is noted that Eicher is a certified public accountant. The Consulting Agreement reflects that Eicher will be performing services for which he is qualified for the limited period of only one year in return for \$17,000. This appears to be a bona fide and reasonable arrangement for services. The Bureau concurs with that conclusion, citing Texas Television, Inc., 91 F.C.C. 2d 1043 (Review Bd 1982).

6. In his Petition For Leave To Amend, Scott also asks that he be permitted to withdraw his integration proposal and his proposal to classify his interest in Great South Broadcasting as nonattributable. This is a universal settlement and the agreement was filed by the deadline for filing a Notice of Appearance. Therefore, Scott readily meets the Commission standard for withdrawing integration/diversification commitments incident to a timely filed universal settlement. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 F.C.C. Rcd 157 (1990), recon. granted in part, 6 F.C.C. Rcd 3403 (1991) at Para. 6 (on reconsideration Commission extends deadline for filing withdrawal of integration and diversification proposals to exhibit exchange date). The Bureau concurs that Scott's withdrawal of his integration and divestiture commitments are timely and should be accepted. See Bureau Comments at 3. The Presiding Judge will permit Scott to withdraw his proposals.

Settlement

7. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, §311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926, 52 Radio Reg. 2d (P&F) 995 (Review Bd. 1983).

8. In this case, the Joint Petition was filed timely in accordance with §73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. Therefore, it is determined that the parties have complied with §73.3525(a)(1) and (a)(2) of the Commission's rules. Also, the Bureau has no objection to approving the settlement.

9. There has been compliance with the local publication requirements of the Commission's rules. 47 C.F.R. §73.3594(g). The parties also qualified for a waiver of the required hearing fees. 47 C.F.R. §1.221(g). Eicher has made a satisfactory showing that its expenses are reasonable and prudent, the Consulting Agreement is reasonable in its terms, duration and compensation, and Scott has met the Commission's standard for withdrawing integration and diversification commitments incident to settlement. Scott has provided for protection of persons from environmental hazard at and around its antenna site to the Bureau's satisfaction. Commission resources will be conserved by the termination of this case prior to hearing. In addition, the public interest will be served by approval of this agreement which will eliminate the need for protracted litigation and the corresponding utilization of resources, and which ensures that a new FM service will be delivered to Bethany Beach, Delaware at an earlier date. Accordingly, it is appropriate that the proposed settlement be accepted.

Order

IT IS ORDERED that the Joint Request For Approval of Settlement Agreement filed on June 3, 1992, by Jeffrey Scott and Eicher Communications, Inc. IS GRANTED and the Agreement IS ACCEPTED.

IT IS FURTHER ORDERED that the Petition For Leave To Amend filed on June 3, 1992, by Jeffrey Scott IS GRANTED and the Amendment IS ACCEPTED.

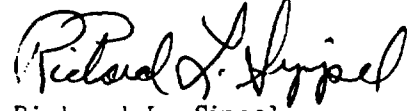
IT IS FURTHER ORDERED that the Application of Eicher Communications, Inc. (File No. BPH-910213MF) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the Application of Jeffrey Scott (File No. BPH-910213ME) for a construction permit for New FM Channel 278A at Bethany Beach, Delaware, IS GRANTED.

IT IS FURTHER ORDERED that the integration and diversification proposals of Jeffrey Scott ARE AUTHORIZED TO BE WITHDRAWN by the applicant and ARE NOW NULL AND VOID.

IT IS FURTHER ORDERED that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

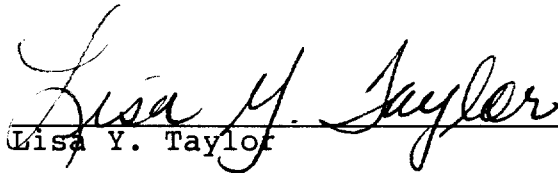
A handwritten signature in cursive script, appearing to read "Richard L. Sippel".

Richard L. Sippel
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Lisa Y. Taylor, a secretary in the law firm of Besozzi & Gavin, do hereby certify that I have, on this 24th day of September, 1992, sent the foregoing "REQUEST FOR FEE REFUND" by hand delivery, to the following:

Mr. Andrew Fischel
Managing Director
Federal Communications Commission
Office of the Managing Director
1919 M Street, N.W., Room 852
Washington, D.C. 20554



Lisa Y. Taylor